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Case No. 99-795

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1999

STATE OF FLORIDA,

Petitioner,

vs.

NATHAN JOE RAMIREZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

RESPONDENT'S BRIEF IN OPPOSITION

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16 pp

PRELIMINARY STATEMENT

The Petition filed herein by the State of Florida incorrectly states that it is a "Petition for Writ of Certiorari to the Supreme Court of the United States." The Petition should properly be directed to the Supreme Court of Florida, as it is that Court's judgment which the State seeks to have this Court review. See ROBERT L. STERN ET AL., SUPREME COURT PRACTICE § 6.21 (7th ed. 1993).

References to the Appendix contained in the State's Petition will be indicated by the letter "A" followed by the appropriate page number(s).

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1999

STATE OF FLORIDA, Petitioner,

v.

NATHAN JOE RAMIREZ, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

The Respondent, Nathan Joe Ramirez, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the judgment and opinion of the Supreme Court of Florida in this case.

JURISDICTION

This Court lacks jurisdiction to review the decision of the Supreme Court of Florida in this case, as the decision rests upon an adequate and independent state ground, primarily the Constitution of the State of Florida, as will be discussed further below in the section entitled "Reasons Why the Petition Should Be Denied."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional provisions cited in the State's Petition, the following constitutional and statutory provisions are involved in this case:

Article I, § 16(a) of the Constitution of the State of Florida provides in pertinent part:

> In all criminal prosecutions, the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed.

Section 39.037(2), Florida Statutes (1995) provides:

> When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to an intake counselor pursuant to s. 39.047, whichever occurs first. If the child is delivered to an intake counselor before the parent, guardian, or legal custodian is notified, the intake counselor or case manager shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified.

STATEMENT OF THE CASE

The material facts surrounding the suppression of Respondent's statements to law enforcement, as set forth in the majority opinion below, are as follows (A-2-A-4--emphasis in original):

> The victim's body was found in an open field not far from her home. Her death was caused by two gunshot wounds to the head. The subsequent investigation revealed that someone had broken into her home and stolen some items of jewelry, her gun, and about $35. There was evidence that the victim had been raped before her death.
>
> [Jonathan] Grimshaw [who was also found guilty of first-degree murder in the instant homicide, but received a life sentence] who was the victim's neighbor, soon became a suspect. After several hours, Grimshaw confessed his involvement in the crime. Although Grimshaw gave several inconsistent versions of events, he eventually admitted his involvement in the crime, but pointed to Ramirez as the ringleader.
>
> In order to convince the police of the truthfulness of his statements regarding Ramirez's involvement, Grimshaw phoned Ramirez from the station while detectives listened in and recorded the call. During the call, Ramirez and Grimshaw discussed the items of physical evidence related to the crime that were in Ramirez's possession and made plans to destroy the victim's automobile to eliminate evidence of the crime.
>
> Ramirez was at home around three o'clock that afternoon when, shortly after the phone call, a sheriff's deputy arrived wearing a badge and carrying a firearm. The deputy asked Ramirez to produce the physical evidence in his possession linked to the murder, including the suspected murder weapon and some of the victim's jewelry. According to the deputy, Ramirez was a "little hesitant at first, [and] denied having the articles." After the deputy informed Ramirez that he knew about the phone conversation with Grimshaw, Ramirez turned over the items that were in the

house and accompanied the deputy to retrieve other items. The deputy then asked Ramirez if he would be "willing to come with [him] to the sheriff's office" to speak with a detective. Once transported to the station, Ramirez was placed in a small room and questioned by two other detectives.

The entire interrogation at the station was videotaped and is part of the record on appeal. The videotape reveals that the lead detective began the interrogation by questioning Ramirez about how the items came into his possession. When Ramirez initially claimed that Grimshaw gave him the items, one of the detectives informed Ramirez that:

> [R]esources indicate that you may have some involvement in the case....What I want you to do is I want you to be honest with me. The indication we have is that both you and John [Grimshaw] are involved....I want you to tell me what happened that night. I know you were there. I wouldn't be here if I didn't know that. You know what I'm saying?

After these statements by the detective, Ramirez admitted breaking into the victim's house the night of the murder.

It was only after this admission that the second detective suggested that Ramirez be informed of his Miranda rights. The detective said:

> Why don't you let Nate [Ramirez] know about his rights. I mean, he's already told us about going in the house and whatever. I don't think that's going to change Nate's desire to cooperate with us.

Ramirez then asked if he was "like being placed under arrest?" to which the other detective responded, "No, no, I'm just reading your rights at this time." After the Miranda rights were administered, Ramirez acknowledged what the detective had read by nodding and stating, "I guess that is what I'm here for."

Ramirez eventually admitted his involvement not only in the burglary, but also in the murder. He stated that he was the one who shot the victim, denied any involvement in the rape, and claimed that he was acting at Grimshaw's direction. Only after Ramirez fully confessed to the murder did the detectives belatedly obtain a written waiver of his Miranda rights. When Ramirez was asked to sign the waiver of rights form after he had fully confessed, the lead detective asked him to acknowledge that he had not been promised anything or been threatened before giving his statement. Ramirez's response was that the detective had only promised to be his friend.

REASONS WHY THE PETITION SHOULD BE DENIED

..."[T]his Court lacks jurisdiction to review a state court's resolution of an issue of federal law if the state court's decision rests on an adequate and independent state ground,...as it will if the state court's opinion 'indicates clearly and expressly' that the state ground is an alternative holding [citations omitted][.]" Sochor v. Florida, 504 U.S. 527, 533 (1992). In its opinion herein, the Supreme Court of Florida made it clear that its decision was supported not only by the Federal Constitution, but by the Constitution of the State of Florida. The Court noted: "Both the United States and Florida Constitutions provide that persons shall not be "compelled" to be witnesses against themselves in any criminal matter. U.S. Const. amend V; Art. I, § 9, Fla. Const." (A-4) The Court further declared: "The protections enunciated in Miranda have been part of this State's jurisprudence for over a century pursuant to the Florida Constitution. See Traylor, 596 So. 2d at 964-66. [Footnote omitted.]" (A-5) Also significant is the fact that the Court cited the Traylor case, [Traylor v. State, 596 So. 2d 957 (Fla. 1992)], another confession case that was decided under the Florida Constitution, some eight times in its discussion of the suppression issue. (A-4, A-5, A-6, A-10, A-14)[1]

In its petition, the State very briefly addresses the issue of an adequate and independent state ground for the instant decision

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[1] In Traylor the Court expressed the principle that "[i]n any given state, the federal constitution represents the floor for basic freedoms; the state constitution the ceiling," 596 So. 2d at 962, which is fully applicable to this cause.

in a footnote on page 13. Petitioner acknowledges that "the Florida Supreme Court made reference to both the state constitution and state law," but cites Oregon v. Hass, 420 U.S. 714 (1975) in support of its assertion that this Court has jurisdiction. However, Hass is easily distinguishable from Respondent's case. In Hass, the decision of the lower court "did not rest on the Oregon Constitution or state law; neither was cited." 420 U.S. at 719 (emphasis supplied). As discussed above, the Florida Supreme Court not only cited; but specifically relied upon the Constitution of the State of Florida for its holding.

Respondent would also note that not only the Florida Constitution, but Florida statutory law as well, played a part in the Florida Supreme Court's decision. The failure of law enforcement to comply with the parental notification statute, section 39.037(2) of the Florida Statutes (1995), when the juvenile was taken into custody was part of the "totality of the circumstances" which the Court considered in ascertaining that Respondent's statements must be suppressed. (A-12-14)

Even if this Court had jurisdiction, Petitioner has not presented any compelling reason why it should exercise that jurisdiction. The instant opinion does not establish any new law or rule of broad applicability that is likely to affect many other criminal cases; only this Respondent's cause is affected by its holding.

The bulk of the State's argument as to why certiorari should be granted herein consists of a discussion of how the Florida

Supreme Court allegedly "misinterpreted and misapplied" three cases: Oregon v. Elstad, 470 U.S. 298 (1985), Fare v. Michael C., 442 U.S. 707 (1979) and Colorado v. Connelly, 479 U.S. 157, 167 (1986). (State's Petition for Writ of Certiorari, pp. 13-26) In this discussion, the State seems to quarrel more with the Florida Supreme Court's application of the rules of law set forth in these cases, rather than objecting to any particular statements of the principles expressed in the cases. However, "[a] petition for writ of certiorari is rarely granted where [as here] the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Rules of the Supreme Court of the United States, Rule 10.

The Supreme Court of Florida summarized the totality of the circumstances existing in this case which caused it to rule that Respondent's confession must be suppressed as follows (A-14):

> In this case, we stress that neither the veracity nor the credibility of the detectives is at issue, but only the uncontroverted facts, including: the fact that the detectives delayed administering the Miranda warnings until Ramirez made inculpatory admissions; the fact that no careful and thorough administrations of the Miranda rights occurred--instead, before administering the Miranda warnings the detective diluted their effect by downplaying their significance; the fact that when administering the warnings the detectives used Ramirez's previous unwarned inculpatory statements to suggest he would not invoke his rights; the fact that Ramirez was a juvenile, with little experience in the criminal justice system; the fact that his parents were not present when he was interrogated; and the fact that the waiver of rights was not in writing. Based on the totality of these circumstances, we find that the oral waiver was invalid as a

> matter of law. Accordingly, we conclude that the confession should have been suppressed.

There is nothing in the Court's decision that suppression was required under these facts which is contrary to the Federal Constitution or cases in which this Court has construed the Constitution. Furthermore, it was within the prerogative of the Florida Supreme Court to determine that exclusion of Respondent's statements was required under the organic law of the State of Florida, which may provide greater protection to those accused of crime than the Federal Constitution mandates. See, for example, Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) and Cooper v. California, 386 U.S. 58 (1967).

It is interesting to note that the State suggests that the videotaping of the interview with Ramirez "should militate against exclusion of the evidence." (State's Petition for Writ of Certiorari, p. 17) On the contrary, the fact that the Supreme Court of Florida was in the unique position of being able to see and hear for itself exactly how the interview was conducted and how and when the Miranda warnings were belatedly and perfunctorily administered to Nathan Ramirez "should militate against" this Court overturning the Florida Supreme Court's well-considered opinion herein.

Finally, the decision of the Florida Supreme Court was not based solely on the erroneous admission into evidence of Respondent's statements to law enforcement. In considering an entirely separate issue, the Court also found error in the admission into evidence at both the guilt and penalty phases of Respondent's trial

of portions of the confession given by Respondent's nontestifying codefendant, Jonathan Grimshaw. (A-15-20) Thus, Respondent's conviction and sentence would be reversed and remanded for a new trial regardless of the disposition of Respondent's issue regarding the denial of his motions to suppress his own statements to the police.

CONCLUSION

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." Rules of the Supreme Court of the United States, Rule 10. The State has failed to demonstrate that this Court has jurisdiction, and that there are "compelling reasons" why it should grant the petition in this case. Respondent respectfully asks this Honorable Court to deny the State's petition for a writ of certiorari.

Respectfully submitted,

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